

**ORDINANCE 2021-20**

**AN ORDINANCE AMENDING THE ZONING CODE OF THE VILLAGE OF COMMERCIAL POINT  
TO REPLACE CHAPTER 1191 OF THE ZONING CODE.**

**WHEREAS**, Ohio Revised Code Chapters 711, 713, and 715 provide a statutory village the authority to enact zoning laws, rules, and regulations and provide for the enforcement thereof; and

**WHEREAS**, the Village of Commercial Point has adopted a Zoning Code, as amended from time to time, to regulate property within the Village; and

**WHEREAS**, Chapter 1191 of the Zoning Code was originally enacted for residential properties within the Village of Commercial Point; and

**WHEREAS**, due to the increase of commercial properties within the Village of Commercial Point, Chapter 1191 of the Zoning Code needs updated to account for the differing landscaping and screening needs of both residential and commercial properties; and

**WHEREAS**, the Village Council wishes to update Chapter 1191 within the Zoning Code of the Village of Commercial Point; and

**WHEREAS**, the Village intends to retain all rights and authority provided to it under the Ohio Revised Code and Zoning Code as amended to enforce the zoning laws, rules, and regulations of the Village.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, OHIO THAT:**

**SECTION 1.** The Zoning Code of the Village of Commercial Point is hereby amended to repeal the current version of Chapter 1191 in its entirety and replace it with Exhibit A attached to this Ordinance and which is incorporated herein by reference. All other components of the Zoning Code of the Village of Commercial Point, as amended, are hereby reaffirmed and readopted. Nothing in this Section shall be construed as the Village waiving any of its rights or authority under the Ohio Revised Code or Zoning Code as amended to enforce the zoning laws, rules, and regulations of the Village.

**SECTION 2.** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any other committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**SECTION 3.** This Ordinance shall take effect at the earliest date allowed by law.

Vote on Passage of the Ordinance:

Motion by: Laura Wolfe

2<sup>nd</sup>: Jason Thompson

Roll Call:

Yes Jason Thompson

Yes Aaron Grassel

Yes Ryan Mitchem

Yes Nancy Geiger

N/A Tracy Joiner

Yes Laura Wolfe

Adopted this 19<sup>th</sup> day of July, 2021.

  
Allan D. Goldhardt, Mayor

  
Wendy Hastings, Fiscal Officer

Approved as to Form:

  
Josh Cartee, Village Solicitor

**Exhibit A**

**CHAPTER 1191**

**Landscaping and Screening**

**1191.01 PURPOSE AND DEFINITIONS.**

The purpose and intent of this chapter is the preservation and promotion of landscaping as a suitable and necessary aspect of land development, as a component of Municipal development character, as an important beneficial element of the microclimate through the provision of shade and as buffers, and to promote the public health, safety and general welfare. It is further the purpose of this chapter to promote the preservation and, when necessary, replacement of major trees removed in the course of land development, to promote the proper utilization of landscaping as a buffer between certain land uses to minimize conflicts, and to protect, preserve and promote the character of the Municipality.

- (a) Caliper – the caliper of a tree shall be measured at six (6) inches above grade. For this chapter the term “caliper” only applies to new trees.
- (b) Diameter Breast Height (dbh) – The dbh of a tree shall be measured at four and one half (4 ½ ) feet above ground level. For this chapter the term “diameter breast height (dbh) only applies to existing trees.
- (c) Major Tree – For the purposes of this section, a major tree is defined by having a diameter breast height of six (6) inches or greater.
- (d) Woodlands – For the purposes of this section, a woodland is an area of trees and unique site characteristic that is located on any undeveloped parcel of property within Commercial Point.

**1191.02 PRESERVATION OF TREES AND WOODED AREAS**

- (a) All major trees shall be preserved unless exempted as follows:
  - (1) An existing tree will be located within a public right-of-way or easement.
  - (2) An existing tree is located within the area to be covered by a proposed structure or within twelve (12) feet from the perimeter of such structure(s) and such structure(s) cannot be located in a manner to avoid removal of an existing tree at the same time permitting desirable, logical and appropriate development of the lot.
  - (3) An existing tree will be located within a proposed driveway designed to service a single-family home.
  - (4) An existing tree is damaged, diseased or a safety hazard.
  - (5) The tree is an undesirable species in its present condition.
  - (6) Established single family lots shall be exempt from this section, however; new subdivision development of single family lots shall not be exempt.
- (b) When preparing and reviewing subdivision plans and landscape plans, good faith effort shall be made to preserve natural vegetation areas. Streets, lots, structures and parking areas shall be laid out to avoid the unnecessary destruction of wooded areas or outstanding tree specimens. Developers of land are encouraged to designate wooded areas as park reserves.

**Exhibit A (continued)**

- (c) Significant Trees. All significant trees shall be protected and preserved to ensure that the value provided to Commercial Point and its citizens by the cultural, historical, biological, or horticultural significance of any tree is continued into the future.

**1191.03 TREE REPLACEMENT.**

- (a) Major Tree Replacement. During the course of development of a single lot or a subdivision, including woodlands, the developer or owner shall be required to replace major trees removed pursuant to Section 1191.02 in accordance with the following schedule.

Major Tree Replacement Schedule

<u>DBH</u>	<u>Replacement Schedule</u>
Six (6) inches up to twelve (12) inches	One-for-One
Twelve (12) inches up to eighteen (18) inches	Two-for-One
Eighteen (18) inches up to twenty-four (24) inches	Three-for-One
Twenty-four (24) inches and greater	Four-for-One

- (1) Replacements for major trees shall have a trunk diameter at planting of at least two and one-half (2 ½ ) inches caliper.
  - (2) The requirement for major tree replacement shall be considered as being in addition to any other landscaping required by Section(s) 1191.02 through 1191.05.
- (b) Replacement Schedule for Woodlands. In addition to the provisions in Section 1191.03(a), the developer or owner of a woodland shall, during the course of development, be required to retain a minimum of forty percent (40%) of the woodland.
- (c) Where it is impractical or not feasible to replace all of the trees on the affected lot or within the affected subdivision, Council may approve one, or any combination of the following alternatives as a means of meeting the tree replacement requirements:
- (1) Replace as many trees as is practical on the affected lot;
  - (2) Replace as many trees as is practical within this affected subdivision phase;
  - (3) Replace as many trees as is practical within the affected subdivision;
  - (4) For those trees that cannot be replaced through steps one through three above, the developer shall be required to replace the trees elsewhere in the Village, or
  - (5) Use larger caliper replacement trees to achieve a planting of equal or greater value with fewer numbers.

**1191.04 LANDSCAPE STANDARDS.**

Proposed landscape materials should complement existing vegetation, all architectural features and general layout, and should be comprised of viable plant material. Landscaping design and materials shall consist of the following:

**Exhibit A (continued)**

- (a) Plants. All plant materials shall be living plants that conform to the standards of the American Association of Nurserymen and shall have passed any inspections required under State regulations. Artificial plants are prohibited in all landscaped areas in the Municipality required as per this chapter.
- (b) Deciduous Trees. Deciduous trees shall be species having an average mature crown spread of greater than fifteen (15) feet in Central Ohio and having trunk(s) which can be maintained with over five (5) feet of clear wood in areas which have visibility requirements, except at vehicular use area intersections where eight (8) foot clear wood requirements will control. Trees having an average mature spread of crown less than fifteen (15) feet may be substituted by grouping of the same so as to create the equivalent of a fifteen (15) foot crown spread. Deciduous trees shall be a minimum of five (5) feet in height with a minimum dbh of one and three-fourth (1 $\frac{3}{4}$ ) inches at planting. Deciduous trees are recommended as appropriate for Municipal environment and encouraged for use in meeting the requirements of this chapter.
- (c) Evergreen Trees. Evergreen trees shall be a minimum of five (5) feet in height with a minimum dbh of one and one-half (1 $\frac{1}{2}$ ) inches at planting.
- (d) Shrubs and Hedges. Shrubs and hedges shall be at least two (2) feet in average height when planted.
- (e) Earth Mounds. Earth mounds shall be physical barriers, which when planted block or screen the view just as a hedge or low wall would. Mounds shall be constructed of clean fill, top soil and similar materials, and shall be designed with proper plant material to prevent erosion and facilitate drainage. Earth mounds shall not exceed four (4) feet in height and shall be planted completely by plant material, which may include mulching limited to the immediate base of plantings, of which no greater than fifty (50) percent shall be turf.
- (f) Screening Materials. Screening may consist of walls, fences, natural vegetation or a combination thereof acceptable to Council and with an opacity of no less than seventy-five (75) percent, except where superseded under Section 1191.02(f). Only masonry and brick walls or solid wood privacy fencing is permitted for built screening. Such screening shall be between four (4) and six (6) feet in height and shall be maintained in good condition. Landscaping provided in lieu of such wall or fence shall consist of dense evergreen bushes planted no less than four (4) feet in height.
- (g) Monoculture. Monoculture, or the extensive use of a single species of trees, shall be limited in order to minimize the potential for disease or pest to strike a particular species resulting in significant same-species loss. The following limits shall apply:

**Maximum Use of Same Genus**

<u>Number of Trees on Site</u>	<u>Maximum % of Same Genus</u>
10 – 19	50%
20 – 39	33%
40 – 59	25%
Over 60	15%

**1191.05 DEVELOPMENT STANDARDS.**

- (a) Non-Residential Uses. For all new construction, building additions, or land development for which a building permit and/or zoning permit is required, the following shall apply:



**Exhibit A (continued)**

- (1) All non-residential uses shall provide thirty (30) square feet of landscaped area for every one thousand (1,000) square feet of building ground coverage area, or fraction thereof. All areas of a lot not covered by buildings, structures, paving, or the landscaping required herein shall be covered by natural turf at a minimum.
- (2) All commercial structures and industrial warehouse structures shall be required to plant the required minimum landscaping listed below:

**Minimum Tree Planting Required per Building Size**

<u>Square Feet of Building</u>	<u>Number of Trees per Square Feet</u>
Up to 30,000 sq. ft.	One Tree per 1,000 sq. ft.
30,001 sq. ft. to 60,000 sq. ft.	One Tree per 2,000 sq. ft.
60,001 sq. ft. to 90,000 sq. ft.	One Tree per 4,000 sq. ft.
90,001 sq. ft. and greater	Two Trees per 8,000 sq. ft.

- (A) In no instance shall the number of trees required to be planted exceed five hundred (500) trees.

- (3) All office uses, institutional uses, convalescent and nursing homes and child daycare facilities, shall be required to plant the required minimum landscaping listed below:

**Minimum Tree Planting Required per Building Size**

<u>Square Feet of Building</u>	<u>Number of Trees per Square Feet</u>
Up to 30,000 sq. ft.	One Tree per 1,000 sq. ft.
30,001 sq. ft. to 60,000 sq. ft.	One Tree per 1,500 sq. ft.
60,001 sq. ft. and greater	One Tree per 2,000 sq. ft.

- (A) In no instance shall the number of trees required to be planted exceed one hundred (100) trees.

- (b) Residential Uses. For all new construction, building additions, or land development for which a building permit and/or zoning permit is required the following shall apply:

- (1) Multi-Family Perimeter Treatment. For all multi-family residential uses, a fifteen (15) foot landscaped perimeter shall be provided where such development is adjacent to or abuts a residential zoning district or public right-of-way, excluding on-site access drives. Such landscaping shall include a combination of trees, shrubs, hedges, earth mounds, and other natural features. No more than eighty percent (80%) of natural landscaping material shall consist of turf.

- (A) Screening Between Multi-Family Developments and Non-Residential Zoned Property. Screening shall consist of walls, fences, or natural vegetation in combination with a minimum four (4) foot mounding. Said screening shall have an opacity of no less than fifty (50) percent, except where superseded under Section 1191.02 (f). Screening between multi-family residential and non-residential developments shall be reviewed for approval by Council. Only masonry and brick walls or solid wood privacy fencing is permitted for built screening, shall be maintained in good condition, and comply with Section 1181.07. Landscaping provided in lieu of such wall or fence shall consist of dense evergreen bushes planted no less than two (2) feet in height or evergreen trees at no more than thirty (30) feet spacing at five (5) feet in height at the time of planting. A minimum of one evergreen tree

**Exhibit A (continued)**

and four evergreen or deciduous shrubs per 1,000 sq. ft. of landscaped area for areas in all combinations of screening materials will be planted.

- (B) The opacity of fifty percent (50%) will take into consideration existing vegetation to be preserved and shall contain at least the minimum evergreen trees and shrubs. The minimum tree shall be five (5) feet in height with a minimum caliper of one and three-quarters (1  $\frac{3}{4}$ ) inches at the time of planting. The minimum shrub shall be two (2) feet in height at the time of planting.
- (c) Existing Trees. Existing healthy trees and shrubs shall be preserved and incorporated into the overall site and landscape design to the maximum extent practical as determined by the Village. Existing trees may be credited towards minimum tree planning requirements.
  - (1) No credit shall be given for existing preserved trees that are:
    - (A) Not located on the actual development site;
    - (B) Not properly protected from damage during the construction process;
    - (C) Dead, dying, diseased, or infested with harmful insects.
  - (2) No new tree planting shall be required if existing trees to remain on site after development, and the aggregate trunk sizes of such trees, meet or exceed the requirements set forth above.
- (d) Any combination of existing and new trees may be used to meet the requirements of this section.

**1191.06 OFF-STREET PARKING STANDARDS.**

- (a) Off-Street Parking Areas. Off-street parking areas for more than five (5) vehicles shall be effectively screened on each side which abuts a residential zoning district or public right-of-way by a masonry wall or solid wood fence. Such wall or fence shall be no higher than four (4) feet and shall be maintained in good condition. Landscaping provided in lieu of such wall or fence shall consist of a strip of land not less than fifteen (15) feet in width planted with an evergreen hedge or dense planting of evergreen shrubs not less than four (4) feet in height. This subsection shall apply to bed and breakfast inns regardless of the size of off-street parking area.
  - (1) All off-street parking areas shall provide one (1) tree of no less than two (2) inches caliper, for every six (6) parking spaces. A minimum of fifty percent (50%) of the off-street parking trees shall be planted in parking lot islands. The remainder must be planted within ten (10) feet of the perimeter of the parking lot.
    - (A) Parking Lot Islands. Each landscaped tree island in a single loaded parking stall design shall have a minimum area of one hundred and sixty-two (162) square feet with a minimum width of nine (9) feet. Each landscaped tree island located in a double loaded parking stall shall have a minimum area of three hundred twenty-four (324) square feet, with a minimum width of nine (9) feet.
  - (2) All parking lot islands and peninsulas shall be designed to provide a minimum of three (3) feet in depth, for soil in a friable condition for healthy tree and plant growth.
  - (3) All trees shall be balled and burlapped or containerized/potted when planted. The top eighteen (18) inches of the burlap bag and cage shall be removed when planting.
  - (4) All trees shall be maintained in a healthy condition.

**Exhibit A (continued)**

**1191.07 SIGNAGE.**

- (a) Signage. A landscaped area totaling a minimum of fifty (50) square feet shall be provided centered on the base of all freestanding signs and should be comprised of a variety of natural materials, such as turf, ground cover, shrubs, and hedges. No more than fifty percent (50%) of natural landscaping material shall consist of turf. Low maintenance plant materials should be utilized. A sketch plan drawn to scale and indicating plant material by type (Latin/Botanical names) and quantity shall be provided with the application for a Sign Permit.

**1191.08 SCREENING OF SERVICE COURTS AND LOADING DOCK AREAS.**

- (a) Screening of Service Courts and Loading Dock Areas. All areas used for service, loading and unloading activities shall be screened along the entire lot line if adjacent to or abutting a residential zoning district or public right-of-way. The requirements of Section 1191.03(f) shall apply.
- (b) Screening of Trash Container Receptacles. For all non-single family residential uses requiring trash container receptacles, such as dumpsters, all such containers or receptacles shall be enclosed on all sides by walls or fences with an opacity of one hundred (100) percent and a minimum height of six (6) feet. Such containers or receptacles when located adjacent to or abutting a residential zoning district shall in addition be landscaped on all sides visible from such districts by shrubs and hedges with an opacity of seventy-five percent (75%). Trash containers and receptacles shall be located behind the building line and shall be located to the rear of non-residential uses. Trash containers and receptacles shall conform to side and rear yard setback requirements and for non-residential uses adjacent to a residential zoning district, such containers and receptacles shall be located no closer than twenty-five (25) feet to any property line.

**1191.09 SUBMITTAL REQUIREMENTS.**

- (a) Procedure. Landscaping plans shall be submitted to the Planning and Zoning Administrator whenever an application is filed for a non-single family residential use as a part of a request for a Certificate of Zoning Compliance, zoning map amendment, conditional use permit, and in conjunction with the submittal requirements for Planned Districts.
- (b) Plan Contents. The landscaping plan shall be prepared by a licensed design professional or landscape architect and shall include the following information:
  - (1) Plot plan drawn to scale indicating property lines, easements, proposed improvements, natural features, drainage, adjacent uses and structures, and proposed landscaping which shall include botanical and common names, dbh of deciduous trees, installation size, on-center planting dimensions where applicable, and a summary of all landscaping materials used on-site, new and existing, by type, common name, and quantity.
  - (2) In the case where trees are to be removed as part of any site development, the plot plan shall, in addition to items included in (1) above, also specifically indicate any trees to be removed and include botanical and common names and location of any major trees and any significant trees.
  - (3) Title block with the pertinent names and addresses of property owner, applicant, design professional or landscape architect including the architect's seal, scale, date, north arrow, address of the subject property, and name of the subdivision (if applicable).

**Exhibit A (continued)**

- (c) Criteria for Review. The submitted landscaping plan shall be reviewed to determine if proposed improvements comply with the requirements and standards of this Chapter and commonly accepted landscaping and design standards. Council and/or the Planning and Zoning Administrator may call upon professional services from either the public or private sectors to provide an evaluation relative to any submitted landscaping plan.

**1191.10 INSTALLATION AND MAINTENANCE.**

- (a) Installation. Landscaping plans and the improvements identified therein meeting the requirements of this Chapter shall be completely installed no later than six (6) months subsequent to the date of issuance of a Temporary Certificate of Use and Occupancy. A single three (3) month extension may be granted by the Planning and Zoning Administrator upon request of the Applicant upon demonstration that such extension is warranted because of adverse weather conditions or unavailability of approved landscaping material. All landscaping material shall be installed in a sound, professional manner and according to accepted landscaping and planting procedures.
- (b) Maintenance. All landscaping material shall be maintained in proper and healthful condition. Property owners shall maintain landscaped areas in a proper, neat and orderly appearance, and free from refuse and debris. Upon issuance of a citation, corrective action shall be completed within sixty (60) calendar days unless the Planning and Zoning Administrator determines that weather constraints require one additional sixty (60) calendar day period. Failure to meet the requirements of this section shall constitute violation of this Zoning Code and enforcement and penalty requirements of Chapter 1135 shall apply.
- (c) Dead or Diseased Trees. It shall be unlawful for any property owner to maintain or permit to stand on his or her property, dead, diseased, or damaged trees, shrubs, evergreens or other plants which are deemed by the Municipality to be a menace to the public peace, health, and safety.

**1191.11 TREE REMOVAL PERMITS**

- (a) No person shall do any of the following without first having obtained a tree removal permit in accordance with the provisions of these regulations:
- (1) Remove, damage, or destroy any tree or similar woody vegetation of any dbh in a woodland;
  - (2) Remove, damage, or destroy any tree or similar woody vegetation of six-inch (6") dbh or greater which is not located in a woodland;
  - (3) Conduct any tree clearing activities.
- (b) Exceptions.
- (1) The removal or trimming of any trees by or on behalf of a resident owner of a one-family dwelling unit, one-family cluster-housing unit, site condominium unit, or residential condominium unit from an area under the owner's exclusive control. This exception shall not apply to removal of trees from common areas.
  - (2) Upon prior approval by the Planning and Zoning Administrator, the removal of or trimming of trees necessitated by the installation, repair or maintenance work performed in a public utility easement or approved private easement for public utilities.



**Exhibit A (continued)**

- (3) The removal or trimming of trees if performed by or on behalf of Commercial Point, Franklin or Pickaway County, Ohio Department of Transportation, Franklin or Pickaway County Public Works Office or other public agencies, or a public utility company in a public right-of-way, upon public property, or upon a private easement for public utilities in connection with a publicly awarded construction project, the installation of public streets or public sidewalks, or installation of public utilities within a private or public easement established for such purpose.
- (4) The trimming and pruning of trees as part of normal maintenance of landscaping or orchards, if performed in accordance with accepted forestry or agricultural standards and techniques.
- (5) The removal or trimming of dead, diseased or damaged trees if performed by or on behalf of Commercial Point, Franklin or Pickaway County, Ohio Department of Transportation, Franklin or Pickaway County Public Works Office or other public agencies in a public right-of-way or upon public property if done to prevent injury or damage to persons or property.
- (6) The removal or trimming of dead, diseased or damaged trees provided that the damage resulted from an accident or non-human cause, and provided further that the removal or trimming is accomplished through the use of standard forestry practices and techniques.
- (7) The removal or transplanting of trees during the operation of a commercial nursery, tree farm or practicing sustained-yield forestry (land stays a productive forest).
- (8) Actions made necessary by an emergency, such as a tornado, windstorm, flood, freeze, dangerous and infectious insect infestation or disease or other disaster, in order to prevent injury or damage to persons or property or restore order.

**(c) Content of Application.**

- (1) Required information. An applicant for a tree removal permit for a parcel of one (1) acre or more, if required by Section 1191.11, shall submit the following materials to the Municipality:
  - (A) A completed tree removal permit application on a form prescribed by Zoning Administrator, which such application shall include the following information:
    - i. The name, address and telephone number of the applicant and / or the applicant's agent.
    - ii. The name, address and telephone number of the owner of the property.
    - iii. The project location, including as applicable, the address, the street, road, or highway, section number, lot or unit number, and the name of the subdivision or development.
    - iv. A detailed description and statement of the activity to be undertaken.
  - (B) A tree removal permit application fee in the amount as established by the adopted fee schedule.
  - (C) If the applicant is not the owner of the property, a written authorization from the owner allowing the proposed activity.

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**Exhibit A (continued)**

- (D) Five (5) copies of a plan for proposed tree removal containing all of the following information:
- i. The shape and dimensions of the property, and the location of any existing and proposed structure or improvement.
  - ii. The location of all existing trees of six-inch (6") or greater dbh, identified by common and/or botanical name. Trees proposed to remain, to be transplanted, or to be removed shall be designated. A cluster of trees may be designated as a "stand" of trees, and predominant species, estimated number, and average size shall be indicated. Clusters of trees located within an approved open space which is to be preserved may be designated as an "open space stand" and identified in the same manner as a "stand" without individual identification and location.
  - iii. A description of tree species, size, density, health and vigor.
  - iv. The location and dimension of all setbacks required by existing zoning requirements.
  - v. A statement that all retained trees will be identified by a method, such as painting or flagging. If protective barriers are deemed necessary by Commercial Point, the statement shall include a description of how the retained trees are to be protected, with an acknowledgment that the barriers must be in place before operations commence.
  - vi. A general grading plan prepared by a registered engineer or land surveyor showing the anticipated drainage patterns, including the location of any areas where cut and fill operations are likely to occur, to enable Commercial Point to determine the impact of the proposal on the viability of the existing trees.

(d) Application Review Procedures.

- (1) Procedure. Commercial Point shall review the submitted application for a tree removal permit required by Section 1191.11 to determine that all required information has been provided. At the request of the applicant or the Municipality, an administrative review meeting may be held to review the request in light of the purpose and the review standards of Section 1191.11. A field inspection of the site may be conducted by the Zoning Administrator. Where the site proposed for development requires review or approval by Council of the subdivision layout, qualification for one-family cluster, or special land use approval, Council shall be responsible for approval or denial of the request for a tree removal permit (subject to affirmance, reversal or modification by the Council of Commercial Point with respect to tentative preliminary plat approval, or any other approval for which Council has final authority). In all other instances, the review of tree removal permit requests shall be the responsibility of the Zoning Administrator. All decisions shall be made in accordance with the review standards of Section 1191.11.
- (2) Denial. If an application for a tree removal permit is denied, the permit applicant shall be notified in writing of the reasons for denial by the Zoning Administrator.

**Exhibit A (continued)**

(3) Approval; Conditions; Performance Requirements. If an application for a tree removal permit is granted, the reviewing authority may do any or all of the following:

(A) Attach to the granting of the permit reasonable conditions considered necessary by the reviewing authority to ensure the intent of Section 1191.11 is fulfilled and to minimize damage to, encroachment in, or interference with natural resources and processes within wooded areas.

(B) Set a reasonable time frame within which to complete tree removal operations.

(C) Require a permit holder to deposit a performance bond, or other acceptable security, equal to 100% of the cost of the improvements to ensure compliance with the terms of Section 1191.11, including the planting of any required replacement trees. Once the trees designated to be removed have been removed and any required replacement trees have been planted and inspected, the Municipality shall release the bond or security. If the permit holder has provided a bond or other performance guarantee to the Municipality under any other ordinance or regulation, and such bond or guarantee is deemed adequate by the Municipality to ensure compliance with Section 1191.11, no additional performance guarantee shall be required under this Section.

(e) Term of Permit.

(1) Any and all tree removal permits issued by the Municipality to a developer shall expire (unless extended) at the same time as the contemporaneous approval granted by the Municipality for the development, if any (e.g., preliminary plat, preliminary site plan, special land use, site plan approval, etc.).

(2) Any and all tree removal permits issued by the Municipality to any person for an activity regulated under Section 1191.11 for which a contemporaneous approval of the development is not required (e.g., removal of trees by a builder in connection with construction of a residence upon a lot or parcel) shall expire one year from the date of issuance.

(3) Any activity regulated under Section 1191.11 which is to be commenced after expiration of a tree removal permit shall require a new application, additional fees, and new review and approval.

(f) Protection of Trees and Woodlands during Construction; Display of Permit.

(1) No individual shall conduct any activity within ten (10) feet of the drip line of any tree designated to remain, including but not limited to placing solvents, building material, construction equipment, or soil deposits within the drip line.

(2) During construction, no individual shall attach a device or wire to any remaining tree, except to cordon off protected areas.

(3) Before development, land clearing, filling, or any property alteration for which a tree removal permit is required, the developer or builder shall erect and maintain suitable barriers such as snow fencing, cyclone fencing, etc., to protect remaining trees. Wood, metal, or other substantial material shall be utilized in the construction of barriers. Protective barriers shall remain in place until the Zoning Administrator authorizes their removal. Barriers are required for all trees designated to remain, except in the following cases:

**Exhibit A (continued)**

(A) Street right-of-way and utility easement may be cordoned by placing stakes a minimum of twenty-five (25) feet apart and tying ribbon, plastic tape, or other brightly visible materials at least two and one-half (2 ½) feet above the ground from stake to stake along the outside perimeters of areas to be cleared.

(B) Large property areas separate from the construction or land clearing area onto which no equipment will venture shall be cordoned off.

(4) The permit holder shall conspicuously display the tree removal permit on-site. The permit shall be displayed continuously while trees are being removed or while activities authorized under the permit are performed, and for ten (10) days following completion of those activities. The permit holder shall allow the Zoning Administrator to enter and inspect the premises during reasonable business hours. Failure to allow an inspection is a violation of Section 1191.11.

(g) Enforcement and Administration. To ensure enforcement of Section 1191.11 and the approved plan for tree removal, various inspections will be performed at the site by the Zoning Administrator. The applicant will be responsible for all inspection fees in accordance with the Inspection Fees set and established by Ordinance of the Council.

(h) Penalties and Remedies

- (1) In addition to the penalties as set forth in Section 1135.12, any person who violates any provision of Section 1191.11 shall forfeit and pay a civil penalty equal to the total value of those trees illegally removed or damaged, as computed from the International Society of Arboriculture shade tree value formula. Such sum shall accrue to the Municipality and may be recovered in a civil action brought by the Municipality.
- (2) Any person authorized or designated by the Planning and Zoning Administrator to enforce or administer Section 1191.11 may issue a stop work order to any person conducting any operation in violation of Section 1191.11. A person shall not continue, or cause or allow to be continued, any operation in violation of such an order, except as authorized by the enforcing agency to abate a dangerous condition or remove the violation.
- (3) If a stop work order is not obeyed, the enforcing agency or person may apply to a court of competent jurisdiction for any order enjoining the violation of the order. This remedy is in addition to, and not in limitation of, any other remedy provided by law or ordinance, and does not prevent criminal prosecution for failure to obey the order.
- (4) Any person aggrieved by a stop work order may request review by the Zoning Administrator of the stop work order within one (1) working day of its issuance. The Zoning Administrator shall then determine whether the stop work order was properly issued due to operations being conducted in violation of the terms of Section 1191.11. The Zoning Administrator may lift the stop work order if the operations are determined to be in compliance with Section 1191.11.
- (5) Any use or activity in violation of the terms of Section 1191.11 is hereby declared to be a nuisance per se, and may be abated by order of any court of competent jurisdiction. In addition to other remedies, the Municipality may institute any appropriate action or proceeding to prevent, abate, or restrain the violation. All costs, fees and expenses in connection with such action, including attorney fees incurred by the Municipality, shall be assessed against the violator.



**Exhibit A (continued)**

**1191.12 PUBLIC SPACES.**

Within the public right-of-way and on public properties, no person or entity other than the Municipality shall plant a tree, shrub, evergreen, woody shrub or other obstruction on public property without the written consent of the Village of Commercial Point. The enforcement and penalty provisions of Chapter 1135 shall apply to this section.

- (a) Tree Topping. No person shall, as a normal practice, top any tree within the public right-of-way. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree so as to remove the normal canopy or disfigure the tree. With an immature tree, removing more than twenty-five percent (25%) of the canopy will be considered topping.
- (b) Height of Limbs Over Sidewalks and Streets. Tree limbs extending over a sidewalk shall be trimmed to such an extent that no portion of the same shall be less than ten (10) feet above the sidewalks. Tree limbs extending over streets shall be trimmed to such an extent that no portion of the same shall interfere with the normal flow of traffic.
- (c) Municipal Rights. The Municipality shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the rights-of-way of all streets, alleys, avenues, lanes and other public grounds as may be necessary to ensure public safety or to preserve or enhance the environmental quality and beauty of such public grounds. The Zoning Administrator may cause or order to be removed any tree or part thereof which is in an unsafe condition or which by reason of its nature poses a threat to the interruption of service to sewers, electric power lines, gas lines, water lines or other public improvements.
- (d) Reducing Tree Lawn. No person shall by any type of construction reduce the size of a tree lawn without first securing permission from the Zoning Administrator.
- (e) Utility Companies. Utility companies shall provide written evidence to the Zoning Administrator, of adherence to established guidelines (as recommended by the National Arborists Association) for line clearance work. These guidelines shall cover the following areas:
  - (1) Tree trimming/pruning.
  - (2) Tree removal.
  - (3) Brushing.
  - (4) Right-of-way clearance for new transmission conductors on private rights-of-way.
  - (5) Chemical brush control and appropriate precautions.
- (f) Removal, Replanting and Replacement in Public Places.
  - (1) Wherever it is necessary to remove a tree(s) or shrub(s) from any Municipally owned property, in connection with the paving of a sidewalk, or the paving or widening of a portion of a street, alley, or highway used for vehicular traffic, or any other reason, the Zoning Administrator must be contacted. At that time, the Zoning Administrator will determine if replacement of the trees and/or shrubs is feasible.
- (g) Public Tree Care.
  - (1) The Zoning Administrator shall notify the Village Council those locations at which he deems the removal of street trees is necessary. The Zoning Administrator will notify the adjacent property owner(s) of the Municipality's intentions to remove the tree(s).

## **ORDINANCE 2021-20**

### **Exhibit A (continued)**

- (2) The Municipality shall have the right to enter private property to gain access to trees adjacent to public areas for the purpose of proper pruning, after reasonable prior notice has been given to the property owner. To ensure that street trees thrive, homeowners are encouraged to confer with the Zoning Administrator, and water and mulch the trees as needed.
- (3) No person or contractor, unless working on behalf of the Municipality, shall attach any rope, wire, nails, advertising poster, decoration, decorative lighting, or other contrivance to any tree on Municipally owned property. No person shall permit any fire to burn where such fire or heat therefrom, or heat from any source will injure any portion of any tree on Municipally owned property. No person or contractor, unless working on behalf of the Municipality, shall use herbicides or other chemicals on any trees, shrubs or evergreens located on Municipally owned property.
- (4) No person shall hinder, prevent, or interfere with the agents or employees of the Municipality while the agents or employees are engaged in planting, maintaining, or removing any tree, shrub, evergreen, or other plant material on Municipally owned property.
- (5) No person shall excavate any ditch, tunnel, trench, or lay any drive within ten (10) feet from the dripline of any tree, shrub, evergreen, or other plant material standing on any Municipally owned property.
- (6) It shall be unlawful for any person or contractor, unless working on behalf of the municipality, to break, deface, injure, mutilate, kill, or destroy any tree, shrub, or evergreen on any Municipally owned property.
- (h) Removal of Stumps. All stumps of street trees shall be removed twelve (12) inches below the surface of the ground. Stumps shall be removed or shall be ground at the site. All residual material shall be removed from the site at the time the tree is removed and the site shall be restored as approved by the Zoning Administrator.
- (i) Arborist License and Bond. It shall be unlawful for any person or contractor working on behalf of the municipality, to act as an arborist in the business or occupation of planting, pruning, treating, or removing street trees within the Municipality without providing documentation as a certified arborist or as the authorized representative of a certified arborist. Each applicant shall file evidence of possession of liability insurance in the minimum amount of \$1,000,000 indemnifying the Municipality or any person injured or damaged resulting from the pursuit of such endeavors as herein described.
- (j) Appeal Procedures. Any person aggrieved by a decision of the Zoning Administrator may appeal the decision to Council as prescribed in Section 1135.04(c).

### **1191.13 PRIVATE STREETS.**

No trees may be planted along private streets without first obtaining a permit from the Zoning Administrator. The permit application must contain a map illustrating the location and botanical and common name of all trees to be planted along with the street.